

Custom Federal Regulations Service™

**This is supplemental material
for Book I of your set of
Federal Regulations**

Title 38, Parts 17, 46, 47, 51–53,
58–64, 70, 71, and 200

Medical

Veterans Benefits Administration

Supplement No. 80

Covering period of *Federal Register* issues
through October 1, 2013

Copyright © 2013 Jonathan Publishing

Need Assistance?

Questions concerning **MISSING SUPPLEMENTS**, need for **ADDITIONAL BOOKS**, and other **DISTRIBUTION LIST** issues for this loose-leaf service should be directed to:

Department of Veterans Affairs
Veterans Benefits Administration
Administration
Mail Code: 20M33
810 Vermont Avenue, N.W.
Washington DC 20420
Telephone: 202/273-7588
Fax: 202/275-5947
E-mail: coarms@vba.va.gov

Questions concerning the **FILING INSTRUCTIONS** for this loose-leaf service,
or the reporting of **SUBSTANTIVE ERRORS** in the text,
may be directed to:

Jonathan Publishing
660 Laurel Street, B-103
Baton Rouge LA 70802
Telephone: 225-205-5873
Fax: 702-993-6003
E-mail: info@jonpub.com

Copyright © 2013 Jonathan Publishing

GENERAL INSTRUCTIONS

Custom Federal Regulations Service™

Supplemental Materials for *Book I*

Code of Federal Regulations

Title 38, Parts 17, 46, 47, 51–53, 58–64, 70, 71, and 200

Medical

Veterans Benefits Administration

Supplement No. 80

5 October 2013

Covering the period of Federal Register issues
through October 1, 2013

When **Book I** was originally prepared, it was current through final regulations published in the *Federal Register* of 15 January 2000. These supplemental materials are designed to keep your regulations up to date. You should file the attached pages immediately, and record the fact that you did so on the *Supplement Filing Record* which is at page I-8 of Book I, *Medical*.

**To ensure accuracy and timeliness of your materials,
it is important that you follow these simple procedures:**

1. Always file your supplemental materials immediately upon receipt.
2. Before filing, always check the Supplement Filing Record (page I-8) to be sure that all prior supplements have been filed. If you are missing any supplements, contact the Veterans Benefits Administration at the address listed on page I-2.
3. After filing, enter the relevant information on the Supplement Filing Record sheet (page I-8)—the date filed, name/initials of filer, and date through which the *Federal Register* is covered.
4. If as a result of a failure to file, or an undelivered supplement, you have more than one supplement to file at a time, be certain to file them in chronological order, lower number first.
5. Always retain the filing instructions (simply insert them at the back of the book) as a backup record of filing and for reference in case of a filing error.
6. Be certain that you *permanently discard* any pages indicated for removal in the filing instructions in order to avoid confusion later.

To execute the filing instructions, simply remove *and throw away* the pages listed under *Remove These Old Pages*, and replace them in each case with the corresponding pages from this supplement listed under *Add These New Pages*. Occasionally new pages will be added without removal of any old material (reflecting new regulations), and occasionally old pages will be removed without addition of any new material (reflecting rescinded regulations)—in these cases the word *None* will appear in the appropriate column.

FILING INSTRUCTIONS

**Book I, Supplement No. 80
October 5, 2013**

<i>Remove these <u>old pages</u></i>	<i>Add these <u>new pages</u></i>	<i>Section(s) <u>Affected</u></i>
--	---------------------------------------	---------------------------------------

**Do not file this supplement until you confirm that
all prior supplements have been filed**

I-19 to I-22	I-19 to I-22	Book I Lead Material
17.INDEX-9 to 17.INDEX-10	17.INDEX-9 to 17.INDEX-10	Part 17 Index
17.1007-1 to 17.1008-1	17.1007-1 to <u>17.2000-2</u>	§17.2000

**Be sure to complete the
Supplement Filing Record (page I-9)
when you have finished filing this material.**

HIGHLIGHTS

Book I, Supplement No. 80 October 5, 2013

Supplement Highlights references: Where substantive changes are made in the text of regulations, the paragraphs of *Highlights* sections are cited at the end of the relevant section of text. Thus, if you are reading §17.100, you will see a note at the end of that section which reads: “Supplement *Highlights* references—37(1).” This means that paragraph 1 of the *Highlights* section in Supplement No. 37 contains information about the changes made in §17.100. By keeping and filing the *Highlights* sections, you will have a reference source explaining all substantive changes in the text of the regulations.

Supplement frequency: Beginning 1 January 2000, supplements for this Book I will be issued *every month* during which a final rule addition or modification is made to the parts of Title 38 covered by this book. Supplements will be numbered consecutively as issued.

Modifications in this supplement include the following:

1. On 17 September 2013 the VA published a final rule effective 17 October 2013, to establish in regulation the readjustment counseling currently provided in VA's Vet Centers to certain veterans of the Armed Forces and members of their families, and implementing provisions of the Caregivers and Veterans Omnibus Health Services Act of 2010 regarding readjustment counseling. Changes:

- Added §17.2000.

Transitional Housing Loan Program

17.800 Purpose. 17.800-1
 17.801 Definitions. 17.801-1
 17.802 Application provisions. 17.802-1
 17.803 Order of consideration. 17.803-1
 17.804 Loan approval criteria. 17.804-1
 17.805 Additional terms of loans..... 17.805-1

Health Care Benefits for Certain Children of Vietnam Veterans and Veterans with Covered Service in Korea—Spina Bifida and Covered Birth Defects

17.900 Spina bifida-provision of health care. 17.900-1
 17.901 Definitions..... 17.901-1
 17.902 Preauthorization. 17.902-1
 17.903 Payment..... 17.903-1
 17.904 Review and appeal process. 17.904-1
 17.905 Medical records..... 17.905-1

Payment or Reimbursement for Emergency Services for Nonservice-Connected Conditions in Non-VA Facilities

17.1000 Payment or reimbursement for emergency services for nonservice-connected conditions in non-VA facilities 17.1000-1
 17.1001 Definitions..... 17.1001-1
 17.1002 Substantive conditions for payment or reimbursement..... 17.1002-1
 17.1003 Emergency transportation 17.1003-1
 17.1004 Filing claims..... 17.1004-1
 17.1005 Payment limitations 17.1005-1
 17.1006 Decisionmakers..... 17.1006-1
 17.1007 Independent right of recovery 17.1007-1
 17.1008 Balance billing prohibited..... 17.1008-1

Vet Centers

17.2000 Vet Center services 17.2000-1

Part 46 — Policy Regarding Participation in National Practitioner Data Bank

Subpart A — General Provisions

46.1 Definitions 46.1-1
 46.2 Purpose 46.2-1

Subpart B — National Practitioner Data Bank Reporting

46.3 Malpractice payment reporting 46.3-1
46.4 Clinical privileges actions reporting 46.4-1

Subpart C — National Practitioner Data Bank Inquiries

46.5 National Practitioner Data Bank inquiries 46.5-1

Subpart D — Miscellaneous

46.6 Medical quality assurance records confidentiality 46.6-1
46.7 Prohibitions concerning negotiations 46.7-1
46.8 Independent contractors 46.8-1

**Part 47 — Policy Regarding Reporting Health Care Professionals
to State Licensing Boards**

47.1 Definitions 47.1-1
47.2 Reporting to State Licensing Boards 47.2-1

**Part 51—Per Diem for Nursing Home Care of
Veterans In State Homes**

Subpart A—General

51.1 Purpose 51.1-1
51.2 Definitions 51.2-1

Subpart B—Obtaining Per Diem for Nursing Home Care in State Homes

51.10 Per diem based on recognition and certification 51.10-1
51.20 Application for recognition based on certification 51.20-1
51.30 Recognition and certification 51.30-1
51.31 Automatic recognition 51.31-1

Subpart C—Per Diem Payments

51.40 Basic per diem 51.40-1
51.41 Contracts and provider agreements for certain veterans
 With service-connected disabilities 51.41-1
51.42 Drugs and medicines for certain veterans 51.42-1
51.43 Drugs and medicines—principles 51.43-1
51.50 Eligible veterans 51.50-1

Subpart D—Standards

51.60 Standards applicable for payment of per diem 51.60-1
51.70 Resident rights 51.70-1
51.80 Admission, transfer and discharge rights 51.80-1

51.90 Resident behavior and facility practices 51.90-1
 51.100 Quality of life 51.100-1
 51.110 Resident assessment 51.110-1
 51.120 Quality of care 51.12p-1
 51.130 Nursing services 51.130-1
 51.140 Dietary services 51.140-1
 51.150 Physician services 51.150-1
 51.160 Specialized rehabilitative services 51.160-1
 51.170 Dental services 51.170-1
 51.180 Pharmacy services 51.180-1
 51.190 Infection control 51.190-1
 51.200 Physical environment 51.200-1
 51.210 Administration 51.210-1

**Part 52 — Per Diem for Adult Day Health Care
 of Veterans in State Homes**

Subpart A—General

52.1 Purpose 52.1-1
 52.2 Definitions 52.2-1

Subpart B—Obtaining Per Diem for Adult Day Health Care in State Homes

52.10 Per diem based on recognition and certification 52.10-1
 52.20 Application for recognition based on certification 52.20-1
 52.30 Recognition and certification 52.30-1

Subpart C—Per Diem Payments

52.40 Monthly payment 52.40-1
 52.50 Eligible veterans 52.50-1

Subpart D—Standards

52.60 Standards applicable for payment of per diem 52.60-1
 52.61 General requirements for adult day health care program 52.61-1
 52.70 Participant rights 52.70-1
 52.71 Participant and family caregiver responsibilities 52.71-1
 52.80 Enrollment, transfer and discharge rights 52.80-1
 52.90 Participant behavior and program practices 52.90-1
 52.100 Quality of life 52.100-1
 52.110 Participant assessment 52.110-1
 52.120 Quality of care 52.120-1
 52.130 Nursing services 52.130-1
 52.140 Dietary services 52.140-1
 52.150 Physician services 52.150-1
 52.160 Specialized rehabilitative services 52.160-1
 52.170 Dental services 52.170-1
 52.180 Administration of drugs 52.180-1

52.190	Infection control.....	52.190-1
52.200	Physical environment.....	52.200-1
52.210	Administration	52.210-1
52.220	Transportation	52.220-1

**Part 53 — Payments to States for Programs to Promote
the Hiring and Retention of Nurses at State Veterans Homes**

53.1	Purpose and scope.....	53.1-1
53.2	Definitions.....	53.2-1
53.10	Decision makers, notifications, and additional information	53.10-1
53.11	General requirements for payments	53.11-1
53.20	Application requirements.....	53.20-1
53.30	Payments	53.30-1
53.31	Annual report	53.31-1
53.32	Recapture provisions.....	53.32-1
53.40	Submission of information and documents.....	53.40-1
53.41	Notification of funding decision	53.41-1

Part 58 — [Removed and Reserved]

**Part 59 — Grants to States for Construction or
Acquisition of State Homes**

59.1	Purpose.....	59.1-1
59.2	Definitions.....	59.2-1
59.3	Federal Application Identifier.....	59.3-1
59.4	Decisionmakers, notifications, and additional information	59.4-1
59.5	Submissions of information and documents to VA	59.5-1
59.10	General requirements for a grant.....	59.10-1
59.20	Initial application requirements	59.20-1
59.30	Documentation.....	59.30-1
59.40	Maximum number of nursing home care and domiciliary care beds for veterans by State.....	59.40-1
59.50	Priority list	59.50-1
59.60	Additional application requirements.....	59.60-1
59.70	Award of grants.....	59.70-1
59.80	Amount of grant.....	59.80-1
59.90	Line item adjustments to grants	59.90-1
59.100	Payment of grant award	59.100-1
59.110	Recapture provisions.....	59.110-1
59.120	Hearings	59.120-1
59.121	Amendments to application	59.121-1
59.122	Withdrawal of application.....	59.122-1

Use of Department of Defense, Public Health Service or Other Federal Hospitals

Emergency use of Department of Defense, Public Health Service or other Federal hospitals	17.51-1
Use of Department of Defense, Public Health Service, or other Federal hospitals with beds allocated to the Department of Veterans Affairs	17.50-1

Use of Public or Private Hospitals

Hospital care and medical services in non-VA facilities	17.52-1
Limitations on use of public or private hospitals	17.53-1
Necessity for prior authorization.....	17.54-1
Payment for authorized public or private hospital care	17.55-1
VA payment for inpatient and outpatient health care professional services at non-departmental facilities and other medical charges associated with non-VA outpatient care	17.56-1

Use of Services of Other Federal Agencies

Alcohol and drug dependence or abuse treatment and rehabilitation in residential and nonresidential facilities by contract	17.80-1
Contracts for outpatient services for veterans with alcohol or drug dependence or abuse disabilities	17.82-1
Contracts for residential treatment services for veterans with alcohol or drug dependence or abuse disabilities.....	17.81-1
Limitations on payment for alcohol and drug dependence or abuse treatment and rehabilitation	17.83-1

VA Health Professional Scholarship Program

Application for the HPSP.....	17.604-1
Availability of HPSP scholarships	17.603-1
Award procedures	17.606-1
Bankruptcy	17.611-1
Cancellation, waiver, or suspension of obligation	17.612-1
Deferment of obligated service	17.608-1
Definitions.....	17.601-1
Eligibility for the HPSP	17.602-1
Failure to comply with terms and conditions of participation	17.610-1
Obligated service.....	17.607-1

Pay during period of obligated service..... 17.609-1
 Purpose 17.600-1
 Selection of HPSP participants 17.605-1

Vet Centers

Vet Center services 17.2000-1

Veterans Canteen Service

Delegation of authority 17.180-1

**Visual Impairment and Orientation and Mobility
Professional Scholarship Program**

Application for the VIOMPSP 17.629-1
 Availability of VIOMPSP scholarships 17.628-1
 Award procedures 17.631-1
 Bankruptcy 17.635-1
 Cancellation, waiver, or suspension of obligation 17.636-1
 Deferment of obligated service 17.633-1
 Definitions..... 17.626-1
 Eligibility for the VIOMPSP..... 17.627-1
 Failure to comply with terms and conditions of participation 17.634-1
 Obligated service..... 17.632-1
 Purpose 17.625-1
 Selection of VIOMPSP participants 17.630-1

**Vocational Training and Health-Care Eligibility Protection for Pension
Recipients**

Medical care for veterans receiving vocational training under
 38 U.S.C. chapter 17.90-1
 Protection of health-care eligibility..... 17.91-1



§17.1007 Independent right of recovery.

(a) VA has the right to recover its payment under this section when, and to the extent that, a third party makes payment for all or part of the same emergency treatment for which VA reimbursed or made payment under this section.

(1) Under 38 U.S.C. 1725(d)(4), the veteran (or the veteran's personal representative, successor, dependents, or survivors) or claimant shall ensure that the Secretary is promptly notified of any payment received from any third party for emergency treatment furnished to the veteran. The veteran (or the veteran's personal representative, successor, dependents, or survivors) or claimant shall immediately forward all documents relating to such payment, cooperate with the Secretary in the investigation of such payment and assist the Secretary in enforcing the United States' right to recover any payment made and accepted under this section. The required notification and submission of documentation must be provided by the veteran or claimant to the VA medical facility of jurisdiction within three working days of receipt of notice of the duplicate payment.

(2) If the Chief Financial Officer or equivalent official at the VA medical facility of jurisdiction concludes that payment from a third party was made for all or part of the same emergency treatment for which VA reimbursed or made payment under this section, such VA official shall, except as provided in paragraph (c) of this section, initiate action to collect or recover the amount of the duplicate payment in the same manner as for any other debt owed the United States.

(b) (1) Any amount paid by the United States to the veteran (or the veteran's personal representative, successor, dependents, or survivors) or to any other person or organization paying for such treatment shall constitute a lien in favor of the United States against any recovery the payee subsequently receives from a third party for the same treatment.

(2) Any amount paid by the United States, and accepted by the provider that furnished the veteran's emergency treatment, shall constitute a lien against any subsequent amount the provider receives from a third party for the same emergency treatment for which the United States made payment.

(c) If it is determined that a duplicate payment was made, the Chief Financial Officer or equivalent official at the VA medical facility of jurisdiction may waive recovery of a VA payment made under this section to a veteran upon determining that the veteran has substantially complied with the provisions of paragraph (a)(1) of this section and that actions to recover the payment would not be cost-effective or would conflict with other litigative interests of the United States. (Authority: 38 U.S.C. 1725)

§17.1008 Balance billing prohibited.

Payment by VA under 38 U.S.C. 1725 on behalf of a veteran to a provider of emergency treatment and any non-emergency treatment that is authorized under § 17.1005(c) of this part shall, unless rejected and refunded by the provider within 30 days of receipt, extinguish all liability on the part of the veteran for that emergency treatment and any non-emergency treatment that is authorized under § 17.1005(c) of this part. Neither the absence of a contract or agreement between VA and the provider nor any provision of a contract, agreement, or assignment to the contrary shall operate to modify, limit, or negate this requirement. (Authority: 38 U.S.C. 1725)

[66 FR 36470, July 12, 2001, as amended at 76 FR 79072, Dec. 21, 2011]

Supplement *Highlights* reference: 66(3).

§17.2000 Vet Center services.

(a) *Eligibility for readjustment counseling.* Upon request, VA will provide readjustment counseling to the following individuals:

(1) A veteran who served on active duty in a theater of combat operations during a period of war.

(2) A veteran who served on active duty in an area in which hostilities occurred, or in combat against a hostile force during a period of hostilities.

(3) A veteran who served on active duty during the Vietnam era who sought or was provided counseling under 38 U.S.C. 1712A before January 1, 2004.

(4) Any member of the Armed Forces, including a member of the National Guard or reserve, who served on active duty in the Armed Forces in Operation Enduring Freedom, Operation Iraqi Freedom or Operation New Dawn.

(5) A family member of a veteran or servicemember who is eligible for readjustment counseling under paragraphs (a)(1) through (a)(4) of this section. For purposes of this section, family member includes, but is not limited to, the spouse, parent, child, step-family member, extended family member, and any individual who lives with the veteran or servicemember but is not a member of the family of the veteran or servicemember.

(b) *Proof of eligibility.* With the veteran's or servicemember's consent, VA will assist in obtaining proof of eligibility. For the purposes of this section, proof of service in a theater of combat operations or in an area during a period of hostilities in that area will be established by:

(1) A DD Form 214 (Certificate of Release or Discharge from Active Duty) containing notations of service in a designated theater of combat operations; or

(2) Receipt of one of the following medals: The Armed Forces Expeditionary Medal, Service Specific Expeditionary Medal (e.g., Navy Expeditionary Medal), Combat Era Specific Expeditionary Medal (e.g., the Global War on Terrorism Expeditionary Medal), Campaign Specific Medal (e.g., Vietnam Service Medal or Iraq Campaign Medal), or other combat theater awards established by public law or executive order; or

(3) Proof of receipt of Hostile Fire or Imminent Danger Pay (commonly referred to as “combat pay”) or combat tax exemption after November 11, 1998.

(c) *Referral and advice.* Upon request, VA will provide an individual who does not meet the eligibility requirements of paragraph (a) of this section, solely because the individual was discharged under dishonorable conditions from active military, naval, or air service, the following:

(1) Referral services to assist such individual, to the maximum extent practicable, in obtaining mental health care and services from sources outside VA; and

(2) If pertinent, advice to such individual concerning such individual's rights to apply to:

(i) The appropriate military, naval or air service for review of such individual's discharge or release from such service; and

(ii) VA for a VA benefits eligibility determination under 38 CFR 3.12.

(d) *Readjustment counseling defined.* For the purposes of this section, readjustment counseling includes, but is not limited to: psychosocial assessment, individual counseling, group counseling, marital and family counseling for military-related readjustment issues, substance abuse assessments, medical referrals, referral for additional VA benefits, employment assessment and referral, military sexual trauma counseling and referral, bereavement counseling, and outreach. A “psychosocial assessment” under this paragraph means the holistic assessing of an individual's psychological, social, and functional capacities as it relates to their readjustment from combat theaters. Readjustment counseling is provided to individuals listed in paragraphs (a)(1) through (a)(4) of this section, and to family members under paragraph (a)(5) of this section, when it would aid in the readjustment of a veteran or servicemember.

(e) *Confidentiality.* Benefits under this section are furnished solely by VA Vet Centers, which maintain confidential records independent from any other VA or Department of Defense medical records and which will not disclose such records without either the veteran or servicemember's voluntary, signed authorization, or a specific exception permitting their release. For more information, see 5 U.S.C. 552a, 38 U.S.C. 5701 and 7332, 45 CFR parts 160 and 164, and VA's System of Records 64VA15, “Readjustment Counseling Service Vet Center Program.” (Authority: 38 U.S.C. 501, 1712A, 1782, and 1783; Pub. L. 111-163, sec. 304, 401, and 402)(The Office of Management and Budget has approved the information collection requirement in this section under control number 2900-0787.)

[78 FR 57073, Sep. 17, 2013]

Supplement *Highlights* reference: 80(1).

End of Part 17